

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ABIMAEL FLORES NAJERA,

Defendant and Appellant.

G034988

(Super. Ct. No. 03CF2477)

ORDER MODIFYING OPINION
AND DENYING PETITION FOR
REHEARING; NO CHANGE IN
JUDGMENT

It is ordered that the opinion filed herein on March 30, 2006, be modified as follows:

On page 16, in the second full paragraph beginning “In *People v. Manriquez* (2005) 27 Cal.4th 547,” after the third sentence ending “judgment under an objective standard,” add a new footnote, which will require renumbering the existing footnote 2 to footnote 3, as follows:

² Najera asserts the provocative conduct included not only name calling, but also the victim’s pushing Najera, which caused him to fall to the ground and prompted a fight between the two. We do not believe such a physical attack on Najera makes a difference in the analysis. Calling Najera a “jota” and pushing him is not sufficiently provocative under an

objective standard to cause an ordinary person of average disposition to act rashly or without due deliberation.

This modification does not affect a change in the judgment. The petition for rehearing is DENIED.

FYBEL, J.

WE CONCUR:

SILLS, P. J.

ARONSON, J.